

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA * Case No. 11-MJ-00456 (JMA)
*
v. * Brooklyn, New York
* May 26, 2011
* MONIKA KAPOOR,
*
Defendant. *
*
* * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR BOND HEARING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: NATHAN D. REILLY, ESQ.
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United States Attorney's Office
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Brooklyn, NY 11201

For the Defendant: MILDRED M. WHALEN, ESQ.
Federal Defenders of New York, Inc.
16 Court Street
Brooklyn, NY 11201

Also Present: MR. RYAN LEHR
U.S. Pretrial Services Officer

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 (Proceedings commenced at 3:42 p.m.)

2 THE CLERK: Criminal cause for bond hearing, *United*
3 *States v. Monica Kapoor*, Case No. 11-mj-456. Please state
4 your appearances for the record.

5 MR. REILLY: Good afternoon, Your Honor. Nathan
6 Reilly for the United States.

7 THE COURT: Good afternoon.

8 MS. WHALEN: Good afternoon, Your Honor, the
9 Federal Defender of New York by Mildred Whalen for Ms. Kapoor
10 and I'm joined by Amy Gell, who is Ms. Kapoor's attorney in
11 her immigration proceedings.

12 THE COURT: And we also have?

13 MR. LEHR: Good afternoon, Your Honor, Ryan Lehr
14 on behalf of Pretrial Services.

15 THE COURT: So who'd like to go first?

16 MS. WHALEN: Your Honor, I guess I'll go first and
17 my initial argument would be to respond to some of the issues
18 that were raised in the government's papers.

19 I guess I'd open with just sort of saying that what
20 our briefs demonstrate is that special circumstances is
21 clearly a case-by-case evaluation and the bases for special
22 circumstances aren't consistent within the cases themselves.
23 I mean cases are cited for one proposition where bail is
24 actually granted and yet, you know, cited as a negative
25 because they found that a certain circumstance didn't apply.

1 So I guess my first response would be that with
2 respect to the high probability of success on the merits, I
3 think the position that the government's staking out would,
4 in effect, not make bail available until after the
5 extradition proceeding had taken place.

6 I understand that a number of the cases that
7 they've cited have shown that at least with probable cause
8 you need to develop the facts in more detail, but I think in
9 Ms. Kapoor's case, the issues that we've raised with respect
10 to probable cause, the issue that we've raised with respect
11 to the confession being obtained by torture, the fact that
12 the confession is really the key link in the case to show any
13 kind of relationship between Ms. Kapoor and what happened
14 here -- I think setting forth in my letter the extradition
15 papers show that she signed certain documents, but the
16 extradition papers also show that many of those documents
17 were altered after she had signed it.

18 Her brothers who clearly have been identified, one
19 of them at least, Rajeev (ph), as the mastermind in the case,
20 the individual who was trying to hide documents, he and his
21 brother have basically said that she wasn't involved in any
22 of the wrongdoing and the only connection that I think the
23 Indian government has set forward to show probable cause is
24 in her statement where she said she signed some documents and
25 was paid to do so and I think that she has renounced that

1 statement in her application for asylum as being obtained
2 after torture and my argument to the Court is if you remove
3 that statement, I don't think that probable cause has been
4 set forth at all.

5 I agree with the government that this hasn't been
6 as deeply established as it will be at a hearing. In my
7 papers it may not be our only basis for attack, but to me
8 after my initial review of the papers, it was the most
9 obvious area for attack.

10 I think the second argument relating to special
11 circumstances is her asylum claim and while the government is
12 correct she didn't immediately request asylum, and I think
13 Ms. Gell can probably speak more fully to that, my experience
14 with the clients that have claimed asylum has been that they
15 haven't made an asylum claim if they've been admitted into
16 the United States.

17 Many people come into the United States, overstay
18 their visas. When they are then apprehended, they'll make a
19 claim of asylum, but most of them are just thankful to be
20 able to be let in.

21 The individuals that I've seen in my experience
22 making applications for asylum -- and this is through the
23 numerous immigration files I've read with respect to clients
24 who have immigration problems in federal court. The files
25 that I've read are people generally raise the asylum claim at

1 the airport when they're denied entry. And then they make
2 the application for asylum then and there.

3 But it hasn't been my experience that people make
4 it if they actually are admitted into the United States.

5 So I don't know that that is such a strong fact
6 against my client, the delay in making the asylum claim.

7 The one thing that I will note is that there's been
8 significant delay on the part of the Indian government in
9 this case.

10 An item that I didn't attach to my motion but
11 that's present in the affidavit -- and I'm sorry, the
12 extradition papers aren't Bates stamped.

13 THE COURT: Yes, so am I.

14 MS. WHALEN: I've actually -- I've made a copy.
15 Our copier can stamp them with pages and I'm happy to send
16 everybody a copy so that we can use it for the extradition
17 hearing itself.

18 But there's a 2002 affidavit from the
19 superintendent of police and in there on page 2 -- and I can
20 show the government --

21 MR. REILLY: Yes.

22 THE COURT: -- and hand it up to the Court. They
23 say that they -- or not page 2 of that report, I'm sorry. On
24 page 10 they actually indicate that they know in 2002 that my
25 client is in the United States staying with her father and

1 her brother, Rajeev Khanna (ph) and they give the address
2 4122 --

3 THE COURT: Right.

4 MR. REILLY: -- 53rd Street, Woodside Queens.

5 THE COURT: Right, I saw that.

6 MS. WHALEN: So they had information as of 2002
7 where she was. As we noted, a warrant for her arrest was
8 issued in 2003 and no action was taken until a second warrant
9 was issued in April of 2010 after she was released on bail
10 for these asylum proceedings and that's when the Indian
11 government chose to go forward with extradition.

12 So I think that while there was delay in her part
13 in raising asylum issues, there's been a significant delay on
14 the part of the Indian government that as of yet is
15 unexplained as to why they didn't bring extradition
16 proceedings against my client when they had reason to believe
17 that they knew where she lived and I believe that there are
18 other documents where that's listed as her prior residence in
19 the United States. I believe it's actually in her asylum
20 papers that she lists that --

21 THE COURT: Is that the only document -- you know,
22 I haven't had a chance to look as carefully as I'd like to
23 and this is a pretty thick file, but that's the page that
24 chambers has come up with that showed -- isn't that the one?

25 THE CLERK: A different page.

1 THE COURT: Oh that was a different page?

2 THE CLERK: Yes.

3 THE COURT: Okay.

4 MS. WHALEN: I was reviewing my papers before
5 court. I believe there were two instances. I know that it
6 was definitely mentioned in one of the earlier --

7 THE COURT: Can't find the Post-It?

8 MS. WHALEN: -- summary findings where they
9 indicated that she was in the United States, but I don't know
10 if they actually gave the specific address. I couldn't find
11 that page again --

12 THE COURT: And I can't find the Post-It. I think
13 the Post-It fell -- oh here it is. Okay. So the one that we
14 found -- that Alexa found, is page 235 of something.

15 Paragraph 12, but I guess I would have to show it to the
16 government because you'll have trouble finding it. It's --
17 since it isn't Bates stamped, it's hard to --

18 MR. REILLY: And, Your Honor, I apologize for that.
19 I can correct that. I won't put Ms. Whalen out. I will
20 provide the Court and Ms. Whalen with a Bates stamped copy --

21 THE COURT: Okay.

22 MR. REILLY: -- as well.

23 THE COURT: If it helps though --

24 MR. REILLY: I apologize for the hardship --

25 THE COURT: In fact, I'm just going to make a copy

1 of this page just so we'll have them here, just while we're
2 doing this, so -- and if you could give me a copy of your
3 page -- just give me your page, I'll copy it and then we'll
4 all have the same pages without having to worry about where
5 we are.

6 (Court and clerk confer.)

11 MS. WHALEN: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. REILLY: So I think that while my client may
14 not have made the asylum claim until she was taken into
15 custody and about to be extradited or was about to be
16 returned on her visa overstay, I don't think that that's an
17 unusual circumstance that would show sort of any -- I guess
18 what -- ingenuousness in her asylum claim.

19 I then wanted to talk about the length and the
20 complexity of the extradition process because the government
21 cited -- I think it's *Rivero* where they say that a person by
22 appealing or taking advantage of all of the appeals and
23 lengthening an extradition request --

24 THE COURT: Right.

25 MS. WHALEN: -- yes, I think it's matter of

1 extradition of *Rivelli* -- doesn't have the right to claim
2 that there's been too much delay. And, Your Honor, I would
3 note that one of the cases the government cited, *Castanada-*
4 *Castillo*, which is --

5 THE COURT: I've got the cite.

6 MS. WHALEN: Okay. In *Castanada-Castillo*, they
7 found that to be a special circumstances. It was also an
8 asylum request and in terms of --

9 THE COURT: Right.

10 MS. WHALEN: -- lengthy proceeding, they looked at
11 the amount of time that the Peruvian government had taken to
12 extradite.

13 THE COURT: Right.

14 MS. WHALEN: They noted the interplay of asylum
15 with the extradition proceeding and they didn't look with
16 disfavor upon someone who had legitimate appeals issues
17 raising those issues.

18 THE COURT: Right.

19 MS. WHALEN: So I think that the mere --

20 THE COURT: Otherwise you shouldn't be penalized
21 for exercising your constitutional --

22 MS. WHALEN: Right.

23 THE COURT: -- and statutory rights.

24 MS. WHALEN: Especially when the matter is not
25 frivolous and I think here when we're arguing the convention

1 against torture, it's not frivolous. Your --

2 THE COURT: Excuse me just second.

3 Alexa, I've got the copies for the -- for counsel.

4

5 MS. WHALEN: Your Honor, and then I think the
6 government's final response to my argument about the
7 likelihood of bail. The government's right.

8 It's not the mere availability of bail for an
9 offense, it's availability for the individual who's about to
10 be extradited and that's where the affidavits that we
11 supplied the Court I think are relevant, especially with
12 respect to Rajeev Khanna, my client's brother.

13 Rajeev Khanna is the one who's referred to as the
14 mastermind in the extradition proceedings. Rajeev Khanna
15 also fled to the United States. He later returned to India
16 and was released on a bond.

17 So I think if the mastermind who fled and returned
18 was released on bond, I think that if Ms. Kapoor returned to
19 the United States -- returned to India, then she would be
20 able to seek bond.

21 And just to clarify if -- if I misspoke at the
22 initial detention hearing, my position isn't that my client
23 fled because she knew she was the target of an investigation.
24 My client fled because she'd been tortured --

25 THE COURT: I understand.

1 MS. WHALEN: -- in an interrogation.

2 THE COURT: Excuse me.

3 MS. WHALEN: And then just one interesting thing
4 with respect to the rejection of care for another individual
5 as a basis for bond. In the *Lo Duca*, Mr. Lo Duca was
6 released on a bond pending the extradition hearing to be able
7 to care for his wife.

8 It was only after he'd been ordered extradited and
9 had brought a habeas petition for continued bail pending his
10 appeals of the extradition that release was denied, but
11 initially that was considered sufficient.

12 I understand that most courts when they're deciding
13 special circumstances only look at the health of the
14 individual involved, but I think that the Court can still
15 consider my client's care of another individual to be part of
16 the general confluence of special circumstances that would
17 permit release in this case.

18 THE COURT: Would I be the first one to do that, or
19 not?

20 MS. WHALEN: No, it was done --

21 THE COURT: Because of that one case?

22 MS. WHALEN: It was -- yes, my reading of *Lo Duca*
23 was the *Lo Duca* decision that is cited was -- and I can get a
24 copy of it. I think that's the Westlaw decision. That was
25 Judge Trager's determination of the habeas. And in that --

1 believe it was Magistrate Pollak. I'll have to check the
2 case, but I believe that that was in this jurisdiction.

3 Mr. --

4 THE COURT: Right, I've got the Westlaw cite for
5 it.

6 MS. WHALEN: Yes, he'd been released during the
7 extradition process to care for his wife who had serious
8 Alzheimer's. In the end, the magistrate judge found that he
9 should be extradited. He then appealed to Judge Trager and
10 at that point that was when Judge Trager said this is no
11 longer a special circumstance.

12 I'm not arguing that it should rise to the level of
13 a special circumstance, but I believe that the Court is
14 allowed to consider it in the confluence of circumstances
15 existing that would justify bail.

16 THE COURT: So Judge Trager never really ruled on
17 it in the context of a proceeding that hadn't been decided?

18 MS. WHALEN: No, no, he was ruling in the context
19 of the extradition having --

20 THE COURT: Right.

21 MS. WHALEN: -- already been ordered.

22 THE COURT: Got it. Okay. And it was Judge Pollak
23 or whoever the magistrate was --

24 MS. WHALEN: That ordered a release.

25 THE COURT: -- magistrate judge was who ordered the

1 release?

2 MS. WHALEN: Yes, I can -- I've got it with me
3 somewhere in here if I can find --

4 THE COURT: And that wasn't appealed? And there's
5 no decision on appeal? Or was that -- or was there no time
6 in between the --

7 MS. WHALEN: I don't believe it was appealed.

8 MR. REILLY: I don't believe there's any record of
9 an appeal, Your Honor.

10 THE COURT: Okay. All right, so that is the -- so
11 that's the only case then that we know of or that is a case
12 that we know of?

13 MS. WHALEN: That's a case in this jurisdiction,
14 Your Honor.

15 THE COURT: Right.

16 MS. WHALEN: I think the other cases that I've seen
17 have said that it's not a special circumstance in and of
18 itself. I think *Lo Duca's* the only case where before the
19 extradition proceeding they found it to be a special
20 circumstance. But Judge Trager did in his decision
21 specifically say it's no longer a special circumstance.

22 THE COURT: Right.

23 MS. WHALEN: Or it's not a special circumstance.

24 THE COURT: Any update on the date of the asylum
25 hearing or is it still in September, September 30th?

1 THE DEFENDANT: Still September 30th.

2 THE COURT: Okay.

3 MR. REILLY: And, Your Honor, may I both address
4 that but also provide the Court some information with respect
5 to the asylum hearing?

6 THE COURT: Sure, and before you do that.

7 MR. REILLY: Yes.

8 THE COURT: The numbers that I was referring to,
9 they appear to be the -- someone has paginated at least my
10 set --

11 MS. WHALEN: I think somebody handwrote maybe at
12 the bottom, but it's not clear --

13 THE COURT: It's not clear what it is.

14 MR. REILLY: Yes, it was provided in that context
15 which is why I filed it as such, but I understand that the
16 pagination is -- upon close review is not --

17 THE COURT: It's not --

18 MR. REILLY: -- particularly consistent, so --

19 THE COURT: Right.

20 MR. REILLY: -- I think it may make things easier
21 going forward --

22 THE COURT: Yes.

23 MR. REILLY: -- to provide a Bates stamped copy --

24 THE COURT: But to the --

25 MR. REILLY: -- which I'm happy to do so.

1 THE COURT: -- to the extent there is a number on
2 the pages that the Court has copied and that you've
3 discussed --

4 MR. REILLY: Yes.

5 THE COURT: -- I just want to say for the record
6 that those numbers are 235 and 10.

7 MR. REILLY: Yes.

8 THE COURT: All right, just --

9 MR. REILLY: Thank you, Your Honor.

10 THE COURT: -- just so the record is clear.

11 Whether that's an accurate pagination or not, that's what
12 these pages say.

13 MR. REILLY: Yes, Your Honor.

14 THE COURT: Okay. Go ahead.

15 MR. REILLY: So first let me just address, since
16 Your Honor raised it, the question of the asylum hearing,
17 which I've been in communication with the Office of
18 International Affairs for the Department of Justice who
19 informed me that is, is their course in this instance they
20 had -- they've informed Department of Homeland Security of
21 this proceeding and that a stay has been requested in the
22 asylum proceeding.

23 At this point my understanding is that they're
24 unaware -- they've informed the, excuse me, the immigration
25 judge of that, but have not been given a hearing date so they

1 don't know whether there will be a stay prior to that hearing
2 date or if the judge will hold the hearing date as previously
3 anticipated.

4 THE COURT: What would the basis of the stay be
5 that --

6 MR. REILLY: My understanding is, again from my
7 conversations with the folks at the Office of International
8 Affair who do this regularly, that there's -- they frequently
9 make this request or as a matter of course make this request
10 so that there aren't sort of contradictory rulings coming out
11 of the court in the course of the extradition proceeding and
12 the asylum claim.

13 THE COURT: Although they're two different
14 decisions though, aren't they?

15 MR. REILLY: Yes, as -- understood, Your Honor.
16 But I -- again, and I can --

17 THE COURT: Okay.

18 MR. REILLY: -- get additional information. My
19 understanding is that that -- this sort of as a matter of
20 course they have the extradition hearing take its -- sort of
21 take precedent and request for a stay in the asylum
22 proceeding.

23 THE COURT: So the extradition hearing -- well, if
24 the --

25 MR. REILLY: The extradition proceedings, I should

1 say.

2 THE COURT: Right. So the extradition proceedings
3 would probably go before the asylum proceedings, at least if
4 that's -- that's Homeland Security's request?

5 MR. REILLY: Yes. Or I -- and the way I
6 understand --

7 THE COURT: Rather than staying these proceedings
8 for the asylum.

9 MR. REILLY: No, exactly, the way I understand it
10 -- or has worked in the past is that the Department of
11 Justice indicates to the Department of Homeland Security that
12 there are extradition proceedings ongoing and in coordination
13 with the Department of Homeland Security, DHS then makes a
14 request to the asylum judge that those proceedings be stayed
15 pending the extradition proceeding is -- now, whether or not
16 that is always followed by the asylum judge, I -- the
17 immigration judge, I'm uncertain, but --

18 THE COURT: And then --

19 MR. REILLY: -- but that request is made.

20 THE COURT: And if a decision were made on the
21 extradition proceedings, would the extradition -- assuming,
22 and I have no reason to say one way or another what the
23 result would be in this case, but if the order were to
24 extradite in a given case, would that be stayed pending the
25 asylum proceedings or would the asylum proceedings simply

1 just not take place because the extradition hearing --

2 MR. REILLY: I will find out the answer to that,

3 Your Honor. I'm not certain. I know that Ms. Whalen
4 indicated in her papers that -- and there's case law for the
5 support -- in support of the filing of a habeas petition in
6 that instance so as to, you know, have the asylum process
7 take its course.

8 I will find out though and certainly inform the
9 Court as to whether or not as a matter of course the
10 extradition order, if there were to be such an order, would
11 be stayed and pending the completion of the asylum
12 proceeding.

13 THE COURT: Is the opposite ever true? Do parties
14 ever request a stay of the extradition proceedings pending an
15 asylum proceeding or does that not ever happen?

16 MR. REILLY: Again, I -- my understanding is, is
17 that -- I'm happy to find out the answer. I don't know. I
18 have been informed by the Office of International Affairs
19 that this -- their standard practice is to have the
20 extradition proceeding go ahead of the asylum, but I
21 certainly wouldn't want to represent to the Court that that's
22 the way it always happens.

23 THE COURT: No, I'm -- I just heard you say that
24 they didn't want to have contradictory rulings and I wasn't
25 sure how that ultimately was going to play out.

1 MR. REILLY: Right, that's my understanding of the
2 rationale is to have the extradition proceeding go first.

3 THE COURT: Okay.

4 MR. REILLY: So --

5 THE COURT: All right. So would you wish to be
6 heard on the --

7 MR. REILLY: Yes, Your Honor.

8 THE COURT: -- the bail issue?

9 MR. REILLY: Taking them one by one, and I
10 certainly agree with Ms. Whalen that the -- as this is an
11 area that's developed in federal common law, it is an area in
12 which there is a wealth of potentially or often actually
13 contradictory guidance.

14 But I think that it is clear on a few points. One
15 is that the standard is quite high for extradition -- for
16 bail in an extradition proceeding because it isn't simply a
17 matter of things that we consider as a result of the bail
18 act, flight risk and risk of danger to the community, but
19 also because there are treaty obligations involved and the
20 desire to fulfill those obligations.

21 With respect to the issue of the potential for
22 success on the merits or high potential success on the
23 merits, again, the government certainly acknowledges that Ms.
24 Whalen or -- and Ms. Kapoor have identified issues that will
25 be raised undoubtedly in an -- in a hearing, but the

1 submission of an affidavit -- and I understand that Ms.
2 Whalen said it may not be unusual, but nonetheless, 10 years
3 after the fact of the claim of asylum or in -- I should say
4 as part of her asylum claim recanting the statement that was
5 made in 1999 is -- in and of itself, while it may create an
6 issue of fact, isn't high probability of success on the
7 merits. There is contrary evidence, the evidence that's
8 included -- the statement that Ms. Kapoor signed, as well as
9 the documentary evidence that's contained herein.

10 So to -- while I understand that it creates an
11 issue, I think to say that it -- that there's been creation
12 of a high standard of or high probability of success is just
13 not an accurate reading of the fact.

14 And I think that's why the cases that the
15 government cited which indicated that at this stage it's
16 premature to make a determination as to probability success
17 on the merits are apt in this case.

18 With respect -- moving on to the issue of the
19 length and complexity the extradition hearing, I think it's
20 important to look at the fact that the process has been
21 moving -- setting aside the question of the 2003 arrest
22 warrant, it's not as if there's been delay here from the
23 presentation of the arrest warrant or the bail hearing and
24 the fact that we're here today.

25 I think that there are instances in which the

1 courts have found delay in which there has been, for
2 instance, a request for additional evidence from the
3 requesting country and that evidence has been not forthcoming
4 for a matter of months or years during the course of the
5 proceeding itself.

6 I agree that we would be in a very different
7 position if Your Honor asked for an extradition hearing a
8 month from now and the government came back and said I need,
9 you know, a year and a half to get material -- additional
10 material from the Indian government, but that's not the
11 situation here.

12 And I think it is a scenario in which -- while the
13 government is in no way suggesting that Ms. Kapoor not be
14 permitted to exercise all of her rights, the notion that --
15 that expressing the intent to sort of fight every step of the
16 process should then be kind of bootstrapped into an argument
17 that the process is going to be unusually lengthy and delayed
18 is -- I think sort of runs the risk of having the -- this
19 particular exception swallow the rule.

20 And I think the same is true with respect to the
21 notion of the applicability of bail in the requesting
22 country. You know, I think that as an initial matter,
23 there's obviously multiple courts throughout the country in
24 various districts that have rejected the (indiscernible)
25 position and I should note that although the *Duca* case

1 considers this as -- or mentions it, I should say, as a
2 special circumstance, the availability of bail in the
3 requesting -- the request -- in the requesting country, *Duca*
4 case doesn't address this at all. It sort of is giving a
5 laundry list of potential special circumstances.

6 So once again we have, you know, the guidance
7 starting with *Wright* in the supreme court suggesting --

8 THE COURT: So *Duca* can go either way then, right?
9 We don't know what Judge Trager would have decided --

10 MR. REILLY: Exactly, it's identifying it and
11 saying this is out there --

12 THE COURT: It's a factor --

13 MR. REILLY: -- in the case law. You know, there
14 are then six or seven courts throughout the country that have
15 said this is -- you know, this is a -- this is sort of a
16 special circumstance that we don't understand and that we
17 explicitly reject because of the fact that it would sort of
18 create -- stand the presumption on its head in the sense that
19 if there were a presumption of bail or a lenient bail
20 standard in requesting countries, it would often stand the
21 *Wright* presumption against bail in extradition proceedings on
22 its head.

23 So I think for each of those reasons, the -- as set
24 forth perhaps more eloquently I hope in the papers, the --
25 we think that these special circumstances don't apply in this

1 instance.

2 THE COURT: Right. You know, I think that the
3 circumstance that was not raised in the papers but that was
4 raised here at oral argument is probably the one that I'm the
5 most likely to consider first, which is the -- not the length
6 and complexity of the extradition hearing or the delay in the
7 completion of it but the lack of -- oh boy, I have to find a
8 diplomatic way to say this, but the lack of speed -- I'll
9 just say speed with which the Indian government has pursued
10 this -- the arrest after the issuance of the arrest warrant
11 in 2003 and which might be a gauge as to the urgency with
12 which the Indian government is seeking this defendant or at
13 least did over the years.

14 And there have been cases that at least chambers
15 have found that have talked about delays in following up
16 criminal proceedings in other countries, delays much shorter
17 than this.

18 There was a decision out of -- in California in the
19 Southern District of California in the *Tates* case and there
20 have been some other cases where one might consider that
21 delay as a factor.

22 So I suppose the way to say it is the sense of
23 urgency. Where there isn't a heightened sense of urgency,
24 then the deference that the government gives to another
25 government or at least that this Court gives might be

1 tempered somewhat as opposed to a case where the government
2 has been diligently from the outset trying to find and
3 extradite a defendant.

4 And in this case, if in fact as documents number 10
5 and -- 235 to whatever it is -- and 235 indicate the Indian
6 government was aware of Ms. Kapoor's presence in this country
7 for a long time and didn't act upon it for seven or -- at
8 least seven years, that I believe is a factor that can be
9 deemed as special circumstance or at least contribute to one.

10 And I was wondering whether you had a view on that
11 or if that's something -- since it wasn't briefed, something
12 you feel you need a minute to think about.

13 MR. REILLY: No, Your Honor, I guess I would say
14 that I think that -- and I sort -- I -- during the course of
15 my research came across the *Tates* case, among others, that
16 raised this issue.

17 I guess I would say that I -- it seems to me to be
18 potentially treacherous terrain for courts -- for U.S. courts
19 to sort of start delving into the criminal process of foreign
20 countries and obviously certainly seven years I will clearly
21 say is -- you know, is a considerable amount of time so I
22 don't want to make -- I don't want to suggest that it's not
23 worthy of consideration.

24 THE COURT: You wouldn't wait seven years to
25 execute an arrest warrant here in this district, I'm sure.

1 MR. REILLY: I don't think that my supervisor be
2 too happy about that, Your Honor.

3 THE COURT: No.

4 MR. REILLY: That said, you know, I think that the
5 extradition process and sort of I think that the idea of
6 going back for one moment to the issue of the availability of
7 bail I think is a potentially applicable argument in the
8 following context, Your Honor.

9 I think some of the courts that have rejected that
10 line of special circumstance have been hesitant because it
11 does put this Court in the position of having to make
12 determinations of what effectively are foreign law or
13 determinations about what -- you know, what would happen
14 under foreign law with a given defendant and a given set of
15 charges.

16 Now, again, I -- it would be foolhardy suggest that
17 this Court isn't capable of taking cognition of the fact that
18 it was seven years. Obviously, I understand that.

19 But I think that the fact of the matter is, is that
20 for whatever reason, and I certainly endeavor to find out the
21 reason, an arrest warrant reissued in 2010 and that matter
22 has been -- in late in 2010 and that matter has been dealt
23 with quickly or relatively quickly by the standards of
24 international protocol.

25 So again, it is not suggest that 2003 to 2010 or

1 2011 is not a long delay, but that I think it's -- you know,
2 in terms of the high standard that exists for finding of --
3 for granting bail in an extradition case, that inserting
4 ourselves into the Indian government's criminal justice
5 process is sort of not ample reason to allow bail in this
6 instance.

7 THE COURT: I'm wondering -- again, I think you
8 were accurate when you described the patchwork nature of the
9 decisions that there's not a huge consistency in the federal
10 common law, and you'll find some courts going one way and
11 some courts going other ways.

12 It seems to me that some of that has to do with the
13 special circumstances provision being both a high hurdle but
14 also one that's individualized to a particular case.

15 And it may be that in determining whether any one
16 of these factors alone can justify a special circumstance or
17 whether taken together with other factors they would justify
18 a special circumstance, the Court is going to have to make
19 that determination.

20 You know, and it seems to me that -- in looking at
21 the factors that Ms. Kapoor has brought to the Court, the
22 likelihood of success in -- ultimately on the merits,
23 especially in India, that's -- you know, that's something
24 that the Court is perhaps less likely to be able to have a
25 crystal ball to make a determination about.

1 But other circumstances which are -- which seem to
2 be more in the nature of the special circumstance, such as
3 the delay by the Indian government in following up on the
4 arrest warrant, the asylum application, the health
5 circumstances of a relative while perhaps not standing on its
6 own but perhaps in combination with other factors, and the
7 fact that one of the co-defendants in India was extradited to
8 India and then released on bail, that some of those factors
9 taken together might also be part of the individual
10 circumstances that the Court would consider in this case.

11 And the question that I would ask is whether or not
12 there's any case law that gives guidance as to how a court
13 should evaluate these claims.

14 In other words, does the Court have to find that
15 there's one special circumstance that by itself would be
16 sufficient to qualify as a special circumstance?

17 In other words, if I find delay is the strongest
18 reason, is it -- if that by itself doesn't constitute a
19 special circumstance, am I not permitted to look at other
20 factors or does the Court have to -- or is -- may the Court
21 or should the Court consider the totality of the
22 circumstances in determining whether special circumstances,
23 plural, exist. And I don't recall --

24 (Court and clerk confer.)

25 MR. REILLY: And, Your Honor, I would just add that

1 the decisions are perhaps uniform in this: They all set
2 forth the high bar.

3 THE COURT: Yes.

4 MR. REILLY: None of them really -- none of them --
5 and I may be incorrect on *Tates*, but as a general rule I
6 should say perhaps more accurately that they're the sort of
7 talismanic formulation of totality of the circumstances is
8 not used in these cases.

9 THE COURT: Right.

10 MR. REILLY: That said, I certainly wouldn't want
11 to represent that -- you know, in many instances it looks as
12 if there are sort of a balancing test or that the fact --

13 THE COURT: Seems that way.

14 MR. REILLY: -- that it's sort of it's used if not
15 formulated in that context. And I -- and the particular case
16 at the moment escapes me.

17 I do have some recollection of at least one case in
18 which there sort of was an inkling that perhaps the
19 (indiscernible) special circumstance out of three or four or
20 five was met and the court said well, that's sort of enough -
21 - that in and of itself is not enough given everything else.

22 So I think the long and -- or the short answer is
23 that I think there is sort of de facto perhaps measure of a
24 totality of the circumstances, although it's certainly not
25 formulated that way in the case law.

1 THE COURT: Right.

2 MS. WHALEN: My reading the only case where I found
3 there was one special circumstance were the cases below *Lo*
4 *Duca* in terms of the original release on bond and in the
5 underlying case the only circumstance noted was the health of
6 the relator's -- I think relator's wife.

9 MS. WHALEN: I'm not sure that it was. I don't
10 think it was. I think it's set forth in the --

11 THE COURT: Right.

12 MS. WHALEN: -- history of *Lo Duca* --

13 THE COURT: Right.

14 MS. WHALEN: -- on how it was set forth, so I don't
15 know if that was in fact the only one or if that was the only
16 one Judge Trager chose to recognize as special.

17 My review of the cases I think is similar to the
18 government's where most of the decisions set forth these
19 five, six, seven, eight circumstances have been found
20 special, they go through they'll make a comment as to whether
21 this circumstance exists in this case.

22 The cases where it's denied, my recollection is
23 that it's always no special circumstances exist, like we've
24 looked at X, Y and Z and none of these special circumstances
25 exist.

1 So I think it is a de facto recognition of
2 totality. I think for the most part they find more than one
3 special circumstance and as I said, *Lo Duca* was the only one
4 where it seemed that there had only been one special
5 circumstance.

6 THE COURT: All right. So we'll move on next to
7 likelihood or the risk of flight?

8 MS. WHALEN: Well I think the prosecutor has noted
9 my client's flight from India to the United States as
10 demonstrating a risk of flight and the fact that she would
11 remove her children and her family and bring them here
12 because of this investigation makes her a risk of flight.

13 I think at this point it weighs on the opposite
14 side. I think she fled because she was about to be tortured.
15 She's here. She's filed an asylum claim. Her ability to
16 remain in the United States rests on this asylum claim, as
17 does her family's.

18 So that if she fled, she not only would be hurting
19 herself, but she'd also be hurting their chances to remain in
20 the United States and at this point her children, who came
21 here when they were young, I believe are now 19 and 14 so
22 they --

23 THE DEFENDANT: Sixteen.

24 MS. WHALEN: Sixteen?

25 They've become acclimated to the United States.

1 They've lived here for the majority of their --

2 THE COURT: Right.

3 MS. WHALEN: -- lives at this point and I think
4 that the circumstances weigh against her flight. I think she
5 has every reason to stay here. No reason to leave.

6 The Court could -- in terms of a guarantee that she
7 wouldn't flee, any documents that she has -- if her passport
8 hasn't been filed with the immigration authority as part of
9 the bond, she could post it with pretrial services. She
10 could submit to electronic monitoring. I think there are a
11 number of things that can be done to guarantee that she stays
12 here.

13 I think flight would be to another country. I
14 think it would be hard for her to be a fugitive within the
15 United States and I think that electronic monitoring and
16 confiscation of any travel documents would eliminate that
17 risk.

18 THE COURT: And could you just reiterate what the
19 bail package is? I have it in writing, at least --

20 MS. WHALEN: Yes. Your Honor, at this point the
21 bail package is much smaller than the one that I had
22 originally hoped to bring to the Court.

23 THE COURT: Okay.

24 MS. WHALEN: A number of the suretors have
25 citizenship applications pending and despite my reassurances

1 that this would have no bearing on it, they were reluctant to
2 go forward with those applications pending. So at this
3 point, four suretors came in this morning to be interviewed
4 by pretrial services. One was found not of a viable
5 financial surety, Mr. Renthara (ph).

6 And I can't find fault with pretrial's decision,
7 especially in light of, for the most part, this is going to
8 be a financial viability bond and they're finding that his
9 credit does not make him a worthy suretor in addition to the
10 prior criminal offense.

11 So we have Mr. and Mrs. Narula (phonetic) and
12 Saranjeet Sethi (ph). Ms. Sethi is Ms. Kapoor's friend and
13 Mr. Narula -- Ms. Narula is her -- an aunt on her maternal
14 side and Mr. Narula is her husband. Ms. Narula has known my
15 client all of her life and Mr. Narula has known her for the
16 past 25 years.

17 The three individuals are all residing legally in
18 the United States. They have -- Mr. Narula is completely
19 verified. I think Ms. Narula just has to verify her
20 employment and Ms. Sethi just has to verify her income, but
21 they've both been found to be viable suretors in this case.

22 The amount of cash that we had hoped to post has
23 also diminished. At this point it's only \$2,000. But I
24 think that given what Ms. Kapoor has to lose if she flees,
25 given what her family faces if she flees, and given her close

1 relationship to the individuals who are posting her bond and
2 who are signing a bond for her, I don't think she would put
3 them at risk.

4 And I have explained to everyone that the bond will
5 be in -- greatly in excess of whatever financial security is
6 posted for the bond and so that simply losing the cash is not
7 what would happen in this case; that they would be on the
8 hook for many years for a large amount of money that would,
9 in effect, financially ruin them.

10 So I think they've all come to court understanding
11 that responsibility, understanding what those -- the
12 liabilities are, and they're still willing to sign this bond
13 knowing that it's an extradition to India and knowing that
14 the charges are pending in India and they're still willing to
15 sign a bond on her behalf.

16 THE COURT: So the suretors that you mentioned, Ms.
17 Kethi (ph) and Mr. Narula?

18 MS. WHALEN: And his wife, yes. Saranjeet Sethi,
19 Nishu Narula, and Vijay Narula.

20 THE COURT: Okay. So there are three plus --

21 MS. WHALEN: Ms. Kapoor would sign. Her husband is
22 here and would be willing to sign. I didn't know if the
23 Court would accept his signature because he's undocumented.
24 But in terms of moral suasion he will definitely sign the
25 bond.

1 MR. REILLY: Your Honor, may I just inquire --

2 THE COURT: Absolutely.

3 MR. REILLY: -- or raise one issue -- and before I
4 forget, pretrial services informs me that Ms. Kapoor's Indian
5 passport is not -- I guess not currently in her possession
6 but in a safe deposit box at a bank.

7 MS. WHALEN: And we could make it available to the
8 Court before she was released. That would be a condition
9 that it be surrendered before she's released.

10 MR. REILLY: But the other issue I wanted to raise
11 with Your Honor was that my understanding is that there is a
12 bond posted in connection with the asylum proceeding as well
13 and I was -- wanted to know whether any of the suretors here
14 are also suretors on that bond.

15 THE COURT: Think it was a cash bond, wasn't it?

16 MR. REILLY: Was it --

17 THE DEFENDANT: It was --

18 MS. WHALEN: I'm sorry, just --

19 (Counsel and defendant confer.)

20 THE COURT: It was 25,000 cash, right?

21 THE DEFENDANT: Yes.

22 MR. REILLY: Okay.

23 MS. WHALEN: I think twenty-two five hundred.

24 THE COURT: Twenty-two five?

25 THE DEFENDANT: Yes. Already posted. Full cash

1 bond.

2 MS. WHALEN: And actually, Your Honor, my client's
3 family brought the passport with them today.

4 THE COURT: Oh, they got it from the safe
5 deposit --

6 MS. WHALEN: Or they got it after I think they left
7 pretrial.

8 THE COURT: Okay. Any objection to just depositing
9 that with pretrial services now pending --

10 MS. WHALEN: No, not at all.

11 FEMALE VOICE: Oh, I have it. I'll bring it up.
12 Okay, perfect. Thank you.

13 MR. REILLY: Your Honor, with respect to risk of
14 flight, you know, I think I'll just briefly reiterate what's
15 in the papers which is that while I understand that there are
16 family members and community ties here at the moment or that
17 have built over the past 10 years, that obviously this is a
18 particularly grave circumstance that Ms. Kapoor is facing and
19 countered with a similar circumstance in the past, she
20 obviously uprooted her life.

21 So I just, you know, I raise the issue that I
22 certainly don't suggest that it would be easy to relocate,
23 but I think that this is obviously a serious situation.

24 THE COURT: Right, but again with everything at
25 stake with the asylum application, it seems that she has

1 everything to lose and nothing to gain by fleeing at least
2 before the asylum application.

3 Also if her brother -- I don't know at the time
4 that she left India if she had any idea that her brother
5 would be released on bail, so it sounds as though even if she
6 went -- if she were extradited back to India, there is a good
7 likelihood that she'd be released on bail. Again, there's no
8 way to predict individual circumstances.

9 MR. REILLY: Correct, Your Honor. I mean, I -- the
10 one piece I -- which I think I raised was simply I don't know
11 how her absence would -- and her leaving the country would
12 impact on the bail proceeding, but understood the situation
13 that her brother --

14 THE COURT: Was similar. And how do we know that
15 the brother was the mastermind?

16 MS. WHALEN: They said it in all those affidavits.

17 THE COURT: So we'll just --

18 MS. WHALEN: I have no idea that he's the
19 mastermind, but all of the affidavits, the conclusory
20 allegation is that he, Rajeev, is indeed the mastermind.

21 I think they probably make that conclusion because
22 Rajeev apparently hid a number -- I think Rajeev hid the
23 incriminating documents showing that the invoices and the
24 licenses had been altered with a friend of his and that's
25 where they were located.

1 THE COURT: At least we don't have any information
2 to contradict the allegation that he was the mastermind?

3 MS. WHALEN: No, and that's the government's -- the
4 Indian government's conclusion or the Indian police
5 department's conclusion is that he was the mastermind.

6 THE COURT: Okay. How long do we anticipate that
7 the extradition proceedings would last? Let me just ask the
8 government that first.

9 MR. REILLY: I think it's not a particularly
10 knowable sort of length at the moment, Your Honor, and I can,
11 again, find out sort of through conversations with the Office
12 of International Affairs what the standard length of such a
13 proceeding.

14 I know that there is one in our office right now
15 which has lasted about -- is sort of coming to an end after
16 about a year which reflected I think multiple appeals and
17 sort of habeas petitions, et cetera.

18 So one I think sort of not unlike at least what Ms.
19 Whalen made representation to her in her papers where sort of
20 every step of the way was contested and that was the time
21 frame that at least again anecdotally was what occurred
22 recently --

23 THE COURT: So would that be a fair assumption in
24 this case or at least no reason to believe that that's not --

25 MR. REILLY: I have no reason to believe otherwise

1 given the representations --

2 THE COURT: Okay.

3 MR. REILLY: -- made by counsel.

4 THE COURT: Ms. Whalen?

5 MS. WHALEN: Your Honor, I mean I think we're
6 probably ready to go on the hearing before you. I mean I
7 would just like some time to prepare because the documents
8 are voluminous --

9 THE COURT: Right.

10 MS. WHALEN: -- and I think there's going to be a
11 lot of reference back and forth. I don't know if the
12 government's going to be calling any witnesses to testify,
13 but just on the face of the documents itself, I think it's
14 probably going to be a day's hearing because we're going to
15 go -- be going back and forth between the documents and what
16 we show and what we don't show. But I think in terms of -- I
17 think we've got the diplomatic note that's needed to go to
18 the next step.

19 THE COURT: And then would there be some briefing
20 afterwards, do you think, or --

21 MS. WHALEN: I mean I think there probably would.

22 THE COURT: -- not necessary?

23 MS. WHALEN: I doubt the government's going to
24 concede that it's a dead bang lack of probable cause and I
25 don't even know if they could. I think that they're required

1 to appeal --

2 MR. REILLY: I think that's a fair assumption.

3 MS. WHALEN: -- on the part of the Indian
4 government.

5 MR. REILLY: That is a fair assumption, Your Honor.

6 MS. WHALEN: So I think -- you know, we'd probably
7 need additional briefing, but I think probable cause would be
8 easy to brief.

9 I think urgency, the -- those -- the other issues,
10 there's urgency, there's the substantive evidence issue,
11 there's the evidence that we can -- I think it's going to be
12 -- yes, it is going to be I would think probably at least
13 three weeks for each brief just because of the number of
14 issues that you have to touch on. So that would put us into,
15 let's say, three months.

16 And then in terms of the appeal, the habeas appeal,
17 it's probably the same arguments that we would make to you,
18 so I don't know that there would need to be any additional
19 briefing unless the Court made findings that we didn't feel
20 had been covered in the initial briefing so that the habeas
21 briefing should be relatively quick assuming you ordered
22 extradition, assuming that we appealed, which I believe we
23 would.

24 And then I -- I'm not -- in terms of the appeal
25 after that, I think the habeas -- I'm just -- I -- whether we

1 have -- I think we have the right under -- on the habeas
2 appeal to go up to the Second Circuit.

3 THE COURT: Circuit, yes.

4 MS. WHALEN: And then when that came back, she
5 would also have the additional right to appeal to the state
6 department on the convention against torture.

7 I think that the extradition merits would probably
8 be relatively -- would probably be resolved here within six
9 months, but I don't know what the time frame -- I know the
10 Second Circuit is backed up, so I don't know how long they
11 take to resolve these matters, but I assume it goes on a fast
12 track since it's extradition.

13 Then I haven't been able to tell from the cases how
14 long it would take to get the state department ruling on the
15 convention against torture. Then there's -- she has the
16 right to appeal their finding if they find against her and
17 then ultimately it looks, although it hasn't been -- I don't
18 think it's been litigated in this circuit yet. It looks like
19 she then has the right to have her asylum proceeding
20 reinstated and get a ruling on the asylum proceeding.

21 THE COURT: Assuming that it's stayed.

22 MS. WHALEN: Assuming that it's stayed, yes.

23 MR. REILLY: Assuming that it's stayed and -- yes,
24 and I believe that that is an open issue.

25 MS. WHALEN: Yes.

1 THE COURT: Probably would make more sense just to
2 go ahead with the asylum proceeding because that would --
3 could answer a lot of questions that need to be answered.
4 But it's not -- anyway. It's not this Court's decision.

5 MS. WHALEN: So --

6 THE COURT: Okay.

7 MS. WHALEN: -- probably a year if not more. I
8 think that's probably conservative --

9 THE COURT: Okay. Anything else?

10 MS. WHALEN: No, Your Honor.

11 MR. REILLY: No, Your Honor.

12 THE COURT: All right, so I'm going to reserve
13 decision, but let me just say that I think -- are the
14 suretors here today?

15 MS. WHALEN: Yes, they are.

16 THE COURT: Okay, so I think what we should do is
17 draft a hypothetical bond. I do this in all cases so that
18 the suretors, especially those from Maryland, don't have to
19 come back. And then we would draft it and I'll issue a
20 ruling. I have to say that I am -- does anybody need to
21 submit anything supplemental? It sounds as though you said
22 everything you needed to say here today, but let me know if
23 there -- you do.

24 MR. REILLY: I don't believe so, Your Honor, but
25 I'll take a look and obviously communicate with chambers if

1 need -- but I don't believe so.

2 THE COURT: Okay. I have to say that the -- I've
3 identified for you, you know, the issues that I see and this
4 -- my real concern about the length of time it took to
5 execute that warrant in addition to the other circumstances.
6 But again, I haven't reached a final decision.

7 Okay. Could you ask the suretors to come forward?
8 (Pause.)

9 MS. WHALEN: And then do you want Ms. Kapoor's
10 husband to sign as well? Although he can return at any time
11 if the Court's willing to --

12 THE COURT: Yes, why don't we let him do it.

13 MS. WHALEN: Okay. Sign today?

14 THE COURT: Yes.

15 (Pause.)

16 UNIDENTIFIED MALE: Yes, please.

17 (Pause.)

18 THE COURT: All right. Now, pretrial services has
19 mentioned a number of conditions here. Have -- again, I'm
20 not making a ruling as to whether or not you can be released
21 today, but if the release were granted, what would a
22 hypothetical bond look like? Would it include these
23 conditions? Would it look different from this? Do you want
24 me to suggest the conditions?

25 (Counsel confer.)

1 THE COURT: We have the home detention with
2 location monitoring. Is that GPS now or is that -- what is
3 it?

4 MR. LEHR: Your Honor, we generally like to choose
5 the type of technology just based on location and so forth,
6 but --

7 THE COURT: Okay.

8 MR. LEHR: -- traditionally it would just -- the
9 radio frequency would detect whether she was -- when she
10 comes and goes.

11 GPS would be -- basically track more, but I don't
12 know how many units we have available and so forth. That's
13 where we generally like to ask the Court if it's okay for us
14 to choose the technology.

15 THE COURT: Does the government have a preference
16 either way?

17 MR. REILLY: I would defer to pretrial, Your Honor.

18 THE COURT: Okay.

19 MS. WHALEN: Your Honor, we can meet all of these
20 conditions, the home detention, reporting to pretrial, the
21 travel restricted to New York City, random home visits by
22 pretrial, and she's already surrendered the passport, so all
23 of these conditions are fine with the defense.

24 THE COURT: What about the government?

25 MR. REILLY: Yes, Your Honor.

1 THE COURT: Okay. So would you like to just fill
2 those conditions in on the bond?

3 MS. WHALEN: Sure.

4 THE COURT: In the meantime, Alexa, would you mind
5 swearing in the suretors?

6 THE CLERK: Sure.

7 (The suretors are sworn.)

8 THE COURT: All right. Good afternoon. Can you
9 each just say your name for the record, please, starting with
10 you, ma'am?

11 MS. SETHI: Saranjeet Sethi. Saranjeet Sethi.

12 THE COURT: Thank you.

13 MR. NARULA: Vijay Narula.

14 MS. NARULA: Nishu Narula.

15 MR. KAPOOR: Atul (ph) Kapoor.

16 THE COURT: All right, you can all stand up a
17 little closer, if you like. All right. Do you understand
18 what it means to sign a bond?

19 MALE VOICE: Yes.

20 FEMALE VOICE: Yes.

21 THE COURT: All right, now we haven't come up with
22 a bond amount. You want to speak to Ms. Whalen and ask --

23 MR. REILLY: Yes.

24 (Counsel confer.)

25 MS. WHALEN: Your Honor, I believe it'll be

1 \$100,000.

2 THE COURT: Does the government agrees if the bond
3 were issued, that that would be the appropriate amount?

4 MR. REILLY: Yes. Yes -- reserving our position,
5 Your Honor, yes.

6 THE COURT: Yes, of course.

7 MR. REILLY: Yes.

8 THE COURT: You're not consenting to the bond.

9 MR. REILLY: Yes.

10 THE COURT: Okay. All right, so this would be a
11 100,000-dollar bond. You do not have to put any money down.
12 You don't have to pay anything. But if Ms. Kapoor were to
13 violate the conditions of her release -- in other words, if
14 she left her home without permission or if she didn't appear
15 in court when she was supposed to, you would each be liable
16 for up to \$100,000.

17 The government could choose to take it all from any
18 one of you or divide it up any way it wishes. In other
19 words, each one -- the government can only take \$100,000, but
20 it could take \$100,000 from, you know, Mr. Kapoor or it could
21 take \$5 from you and the rest from the others. Do you
22 understand?

23 (No audible response.)

24 THE COURT: So the suretors have indicated they
25 understand.

1 The government can take this money by either taking
2 any property that you have -- if you have an automobile, it
3 could take your automobile, it could take any savings that
4 you have, and it could take part of your wages each paycheck;
5 could garnish your wages. Do you each understand that?

6 MALE VOICE: Yes.

7 THE COURT: All right, you need to all speak up.

8 ALL: Yes.

9 THE COURT: Okay. Is there anybody who has any
10 questions about anything that I've said?

11 MALE VOICE: No.

12 THE COURT: All right. Would you all be signing
13 this bond because you want to?

14 FEMALE VOICE: Yes.

15 MALE VOICE: Yes.

16 THE COURT: All right. Anybody force you or
17 threaten you to make you sign the bond?

18 FEMALE VOICE: No.

19 THE COURT: All right. And let me just ask how
20 does each one of you know Ms. Kapoor. Ma'am?

21 MS. SETHI: I know her from nine years like -- I
22 know her from nine years. She's a family friend. We are
23 very close friends, actually.

24 THE COURT: Okay. Sir?

25 MR. NARULA: Well I'm related to her and I know

1 her --

2 THE COURT: Can you just say your name for the
3 record?

4 MR. NARULA: Yes, I'm -- I know her since she was a
5 child and she's grown before me and I know her for the last
6 25, 26 years.

7 THE COURT: Okay. Ma'am, can you just say your
8 name for the record, please?

9 MS. NARULA: My name is Nishu.

10 THE COURT: Yes.

11 MS. NARULA: She's my niece.

12 THE COURT: Okay.

13 MS. NARULA: She was born in front of me and I know
14 her (indiscernible) --

15 THE COURT: Thank you. Sir?

16 MR. KAPOOR: She's my wife.

17 THE COURT: I understand.

18 MR. KAPOOR: I know for 40 years.

19 THE COURT: Okay. Thank you. All right, so you're
20 all free to sign the bond.

21 Have both attorneys looked at the bond to make sure
22 that it -- it's satisfactory?

23 MR. REILLY: Yes, Your Honor.

24 THE COURT: Okay.

25 All right, Ms. Kapoor, I'm not making the decision

1 today, but I've listened to the arguments that your attorney
2 has made and that the government's attorney has made and the
3 law -- I have to follow the law, whatever the law tells me to
4 do.

5 There is some -- there are some questions that I
6 need to do some research about to answer, but I will try to
7 make the decision as soon as I can. Okay.

8 MR. LEHR: Your Honor?

9 THE COURT: Yes?

10 MR. LEHR: With regard to the passport, if Ms.
11 Kapoor does not make bond, should this be returned to her
12 husband or should it be held in pretrial?

13 THE COURT: How do you want to do that?

14 MS. WHALEN: Why don't we return it to her husband
15 and he can put it back in the safe deposit box.

16 THE COURT: Okay. Thank you.

17 (Counsel and clerk confer.)

18 THE COURT: We'll do it just a minute, yes.

19 (Pause.)

20 THE COURT: All right. For the record, I'm
21 assuming that neither counsel will be making any additional
22 submissions, but if there is anything you do want to submit,
23 just do it by the end of the day tomorrow, okay, so I can
24 make a decision. And I just want everyone to know that I'm
25 taking this very seriously and that I will try to make a

1 decision as soon as I can. Okay? Same for the government.

2 MS. WHALEN: Oh, Your Honor, do you want to set a
3 hearing date for the extradition hearing today or should
4 we --

5 THE COURT: Yes. How much time do you need to
6 prepare for it and do you want to submit anything in writing
7 beforehand? Would that make more sense, or after the
8 hearing?

9 MS. WHALEN: It might make more sense to do it in
10 writing unless you're going to call -- do you anticipate in
11 calling witnesses right now?

12 MR. REILLY: At the moment, Your Honor, I don't
13 anticipate calling witnesses, although that may be subject to
14 change. I don't know. Obviously I will find an answer to
15 that rapidly.

16 MS. WHALEN: Sure.

17 THE COURT: Sure.

18 MR. REILLY: But I was anticipating perhaps
19 submitting something in writing, sort of briefing in advance
20 for Your Honor.

21 THE COURT: I think that makes sense.

22 MS. WHALEN: Yes. I think you have all the paper.
23 So --

24 THE COURT: Yes.

25 MS. WHALEN: -- as I said, I have already a

1 paginate copy that I'm happy to send to everybody and so we
2 could, if we worked off of that copy, I think -- I just --
3 I'll be away at the conference next week so I would say 6th,
4 13th, maybe the week after the 13th?

5 THE COURT: The 20th?

6 MS. WHALEN: Yes. If I could have it the week of
7 the 20th? I -- why don't I make it Monday, and that'll
8 keep --

9 THE COURT: The 16th?

10 MS. WHALEN: Is that the --

11 THE COURT: Or the 20th? Well, the 13th is a --

12 MS. WHALEN: A -- it's a Monday, right?

13 THE COURT: -- Monday. Okay.

14 MS. WHALEN: I don't have my calendar.

15 MR. REILLY: The 13th is a -- Monday, June 13th.

16 MS. WHALEN: Yes. So we'll --

17 THE COURT: Okay, so tell me what day you would
18 like it?

19 MS. WHALEN: Why don't we put it on for me, for my
20 personal record keeping, I'll be more on top of it if it's
21 due on a Monday, the 20th.

22 THE COURT: June 20th, okay, so that's the hearing
23 submissions. Okay.

24 MS. WHALEN: All right. I -- I'm sorry, and I --
25 is that okay with you?

1 MR. REILLY: Yes, that's fine.

2 MR. REILLY: Okay.

3 THE COURT: And, Mr. Reilly, what -- excuse me,
4 what -- when would you like to respond?

5 MR. REILLY: Your Honor, if I could have -- let me
6 just double check. If the Court would be willing to give me
7 until the middle -- the -- 10 days, to the 29th?

8 THE COURT: Of course.

9 MR. REILLY: Okay. In fact, if I may, Your Honor,
10 maybe to be more safe, just the Friday, the 1st of July?

11 THE COURT: Of course. All right. And then what
12 do you -- what would you like to do after that? Do you want
13 a decision made on papers? Do you want to come in for an
14 oral argument? Do you want an actual hearing in which there
15 would be witnesses? You probably don't know the answer to
16 that yet, right?

17 MS. WHALEN: Yes, maybe we could -- maybe we -- I
18 could -- I could talk to Mr. Reilly after I see his
19 submission and we could talk about whether we need a hearing,
20 which I -- I'm not sure that we will.

21 You guys can all go sit down, I'm sorry.

22 MR. REILLY: Uh-huh.

23 THE COURT: Oh, yes, please. Please sit down. And
24 you also -- I mean I would like to have argument on it. I
25 think it would be good for --

1 MS. WHALEN: Yes.

2 MR. REILLY: Yes, Your Honor.

3 MS. WHALEN: Yes.

4 THE COURT: -- for all purposes, because I may have
5 some questions.

6 MR. REILLY: Sure.

7 MS. WHALEN: So we could maybe put argument on two
8 weeks after the 1st or one week?

9 THE COURT: Probably depends on how long it's going
10 to take us to review. How voluminous are your submissions
11 going to be?

12 MS. WHALEN: I have no idea at this point.

13 MR. REILLY: Yes.

14 MS. WHALEN: I mean I know that going through it I
15 saw a lot of factual things that I wanted to bring to the
16 Court's attention. It's not going to be as big as --

17 THE COURT: All right. Let me just --

18 MS. WHALEN: Maybe we could contact the Court the
19 Monday, like how -- maybe Tuesday the -- well, I'm sorry,
20 I'll be away. Maybe we could contact the Court on the 11th
21 and -- of July. We could have a status conference or maybe
22 do a conference call to the Court to see what seems to be the
23 best next step.

24 THE COURT: Okay. I have a trial that starts the
25 following week and it could be lasting through the middle of

1 the week of the 25th, so it's always good if we can schedule
2 a date just that we can hold just in case.

3 MS. WHALEN: Okay.

4 THE COURT: So perhaps the week of the 25th is a
5 good week to hold it then, correct?

6 MS. WHALEN: Your Honor, I think -- I'll be on
7 trial that week, although it should be relatively short if --
8 it's just a felony possession trial, so I would think I would
9 be available the 28th.

10 THE COURT: All right. Otherwise we could do it
11 the 15th. I just don't know if that's going to be enough
12 time.

13 MS. WHALEN: The 15th of --

14 MR. REILLY: July 28th, me.

15 MS. WHALEN: The --

16 THE COURT: Of July?

17 MS. WHALEN: The 28th?

18 MR. REILLY: Yes, I think the 28th may be
19 preferable, Your Honor.

20 THE COURT: 28th is better?

21 MR. REILLY: Just --

22 THE COURT: Given --

23 MR. REILLY: -- given that --

24 THE COURT: Yes.

25 MR. REILLY: -- particularly if either side is

1 intending to call witnesses.

2 THE COURT: Okay.

3 MR. REILLY: Or --

4 THE COURT: All right. So the 28th, I have -- I
5 think we better do that in the afternoon.

6 MR. REILLY: Okay.

7 THE COURT: 3:30? Is that going to be enough time?
8 Well, you'll let me know if we need more time.

9 MR. REILLY: Yes, Your Honor.

10 MS. WHALEN: Yes, I --

11 THE COURT: Do we need a conference on the 11th
12 just to see where we're going?

13 MS. WHALEN: I think that's probably wise.

14 THE COURT: Okay. So I'm going to hold the 28th at
15 3:30. The 11th, just to see what we need, we'll have a very
16 quick conference at 4:45?

17 MS. WHALEN: 12:45?

18 THE COURT: 4:45.

19 MS. WHALEN: 4:45 is good.

20 THE COURT: Is that okay?

21 MR. REILLY: That's fine, Your Honor.

22 THE COURT: Okay. And if you want to come in
23 person, come in person. Otherwise, we can do it by phone.
24 Although you're here, but --

25 MS. WHALEN: Yes.

1 THE COURT: All right. We'll do it in person then.

2 MS. WHALEN: Okay.

3 MR. REILLY: That's fine.

4 THE COURT: All right. Thank you.

5 MS. WHALEN: Thank you.

6 MR. REILLY: Thank you, Your Honor.

7 THE DEFENDANT: Thank you.

8 (Proceedings concluded at 4:48 p.m.)

9 I, CHRISTINE FIORE, Certified Electronic Court Reporter
10 and Transcriber and court-approved transcriber, certify that
11 the foregoing is a correct transcript from the official
12 electronic sound recording of the proceedings in the above-
13 entitled matter.

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May 30, 2011

17 Christine Fiore, CERT

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